

EXHIBIT C
RENEWABLE ENERGY FOR AGRICULTURE PROGRAM (REAP)
STANDARD GRANT TERMS AND CONDITIONS

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EXHIBIT C

TERMS AND CONDITIONS

1. ***Introduction***

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, or Commission) and the Recipient is funded by the California Climate Investments and is subject to the laws enacted for the administration of auction proceeds deposited into the Greenhouse Gas Reduction Fund, including without limitation: AB 109 (Chapter 249, Statutes of 2017); SB 856 (Chapter 30, Statutes of 2018); Health and Safety Code section 39710 et. seq.; and Government Code sections 16428.8 – 16428.95, including any amendments to these sections.

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) these terms and conditions (**Exhibit C**); (5) any special terms and conditions that address the unique circumstances of the funded project (**Exhibit D**); (6) a contacts list (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of funds (Commission-reimbursed and/or match share) must occur within the Agreement term specified on the CEC-146 form.

2. ***Documents Incorporated by Reference***

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (g) and (h) below. Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Energy Commission Guidelines

- a. Renewable Energy for Agriculture Program Guidelines,
<https://www.energy.ca.gov/renewables/18-MISC-03/documents//>

Solicitation Documents

- b. The funding solicitation for the project supported by this Agreement
- c. The Recipient's application submitted in response to the solicitation including all budget documentation

California Air Resources Board Documents

- d. California Air Resources Board, Funding Guidelines for Agencies that Administer California Climate Investments, www.arb.ca.gov/cci-fundingguidelines

Federal Cost Principles (*applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations*)

- e. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (*applicable to commercial organizations*)

- f. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- g. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- h. Any laws or regulations applicable to the project that are not expressly listed in this Agreement

3. *Standard of Performance*

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed. In addition to any other rights and remedies the Commission may have, any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by CAM, shall be borne in total by Recipient and not the Energy Commission.

4. *Due Diligence*

The Recipient must take timely actions that, taken collectively, move this project to completion. The Commission Agreement Manager (CAM) will periodically evaluate the project schedule for completion of Scope of Work tasks. If the CAM determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the CAM may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. *Products*

- a. “**Products**” are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as a report, notification or confirmation.
- The Recipient will submit all products identified in the Scope of Work to the CAM, in the manner and form specified in the Scope of Work.
 - The Recipient will also submit all products prepared during the invoicing period to the Accounting Office along with the invoice, as specified in subsection (j) of Section 8 (Payment of Funds).

If the CAM determines that a product is substandard given its description and intended use as described in this Agreement, the CAM may, without prejudice to any of the Commission’s other remedies, refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement. This is in addition to any other rights and remedies the Commission may have.

- b. Confidential Products

Please see Section 18 (Confidentiality) for instructions regarding confidential products.

- c. Rights in Products

See Section 19, Intellectual Property, in this Exhibit C.

d. Failure to Submit Products

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any of the Commission's other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Legal Statements on Products

- 1) All documents that result from work funded by this Agreement and are released to the public must include the following statements to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

- 2) The Recipient will apply copyright notices to all documents prepared for this Agreement that are released to the public (including reports, articles submitted for publication, and all reprints) using the following form or any other form that may be reasonably specified by the Energy Commission.

“©[Year of first publication of product] [the Copyright Holder's name]. All Rights Reserved.”

f. Acknowledgement of California Climate Investments

Recipients shall acknowledge California Climate Investments and Renewable Energy for Agriculture Program as the source of project funds, in any publications, websites, signage, invitations, and other media-related and public-outreach products. The standard funding language is:

The Renewable Energy for Agriculture Program is part of California Climate Investments, a statewide program that puts billions of Cap-and-Trade dollars to work reducing GHG emissions, strengthening the economy, and improving public health and the environment – particularly in Priority populations. The Cap-and-Trade program also creates a financial incentive for industries to invest in clean technologies and develop innovative ways to reduce pollution. California Climate Investments projects include affordable housing, renewable energy, public transportation, zero-emission vehicles, environmental restoration, more sustainable agriculture, recycling, and much more. At least 35 percent of these investments are located within and benefiting priority populations across California. For more information, visit the California Climate Investments website at: www.caclimateinvestments.ca.gov.

The Recipient is encouraged to display the California Climate Investment logo on equipment and signage to acknowledge the funding source.

Guidance on California Climate Investment logo usage, signage guidelines, and high resolution files are contained in a style guide available at: <http://www.caclimateinvestments.ca.gov/logo-graphics-request/>.

6. Amendments

a. Procedure for Requesting Changes

The Recipient must submit a written request to the CAM for any change to the Agreement. The request must include:

- A brief summary of the proposed change;
- A brief summary of the reason(s) for the change;
- Justification for the change; and
- The revised section(s) of the Agreement, with changes made in underline/ strikethrough format.

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's unilateral termination rights in Section 15 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a Commission business meeting or by the Executive Director (or his/her designee).

The CAM or Commission Agreement Officer (CAO) will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

c. Subcontractor/Vendor Changes

Any subcontractor/vendor changes require advance written approval by the CAM, in addition to the appropriate level of Commission approval as described in subsection (b).

- d. Site Preparation Budget changes
- Changes to the budget amount allocated to site preparation on the Budget Worksheet may not exceed a maximum of a 10% increase from the original dollar amount allocated to site preparation. In the case of a dollar decrease in site preparation, there is no restriction.
 - If the original dollar amount for site preparation on the Budget Worksheet is zero dollars (\$0), then the maximum amount that can be reallocated for site preparation work is limited to a maximum of 10% of the total Agreement amount.
 - All changes to site preparation budget amounts shall follow the process in a and b above.
 - Changes cannot increase the overall amount of the grant.

7. ***Contracting and Procurement Procedures***

This section provides general requirements for agreements entered into between the Recipient and subcontractors or vendors for the performance of this Agreement.

Subcontractor is defined as a person or organization who assists in the prime contractor in performing programmatic functions. The **subcontractor** is somewhat of a "partner" for the prime contractor and provides goods or services specifically tailored to meet the programmatic needs of the prime contract.

A **vendor** provides off-the-shelf, commercially-available goods or services. The vendor will provide these same goods or services to anyone who pays the vendor.

a. Recipient's Obligations to Subcontractors and Vendors

- 1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontractors or vendors it contracts with for the performance of this Agreement.
- 2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors or vendors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors, vendors, or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.
- 3) The Recipient's obligation to pay its subcontractors and vendors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor or vendor.
- 4) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor and vendor for work performed in accordance with the terms of this Agreement.

b. Flow-Down Provisions

- (1) Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below.
- Standard of Performance (Section 3)

- Legal Statements on Products (included in Section 5, “Products”)
- Prevailing Wage (Section 9)
- Recordkeeping, Cost Accounting, and Auditing (Section 10)
- Equipment (Section 13)
- Indemnification (Section 17)
- Confidentiality (Section 18)
- Intellectual Property (Section 19)
- Access to Sites and Records (included in Section 20, “General Provisions”)
- Nondiscrimination (included in Section 21, “Certifications and Compliance”)
- Survival of the following sections:
 - Equipment (Section 13)
 - Recordkeeping, Cost Accounting, and Auditing (Section 10)
 - Intellectual Property (Section 19)
 - Access to Sites and Records (included in Section 20, “General Provisions”)

(2) Subcontracts funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

(3) Vendor subawards funded in whole or in part by this Agreement must include language conforming to the provisions below:

- Prevailing Wage (Section 9)
- Recordkeeping, cost accounting and auditing (Section 10)
- Indemnification (Section 17)
- Access to Sites and Records (included in section 20, General Provisions)

c. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient’s final invoice under this Agreement.

d. Copies of Subcontracts and Vendor Awards

The Recipient must provide a copy of its subcontracts and vendor awards upon request by the Energy Commission.

e. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CAM of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CAM of the conflict within fifteen (15) days of discovery. The Energy Commission may, without prejudice to any of its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

f. Penalties for Noncompliance

Without limiting the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

g. License Requirements for Subcontractors and Vendors

All third-party subcontractors and vendors who perform installation and/or site preparation must be properly licensed by Contractors State License Board (CSLB), unless the work is of the type not required to be done by a licensed contractor.

If Recipient chooses to perform installation/site preparation work with its own employees:

- Labor cost is not reimbursable.
- Recipient must ensure that the person performing the work is properly licensed by CSLB, unless the work is of the type not required to be done by a licensed contractor.

8. Payment of Funds

a. Definitions

For purposes of this Section 8, the following terms have the following meaning:

- "Incurred Cost" means an expense for which the Recipient has become liable (legally obligated) to pay. Here are examples of incurred costs:

- The Recipient has purchased a piece of equipment **and** received an invoice, bill, or receipt. The Recipient has not yet paid the invoice. The invoice shows the amount to be paid and confirmation of the sale. This is an Incurred Costs.

Incurred costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.

- "Paid Cost" means an expense for which the Recipient has already made payment.

b. Advance Payments

No monies shall be advanced to the Recipient for any goods or services related to this project.

c. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget, including items in the Budget Worksheet are caps (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget identifies equipment cost is \$100,000, but the actual equipment cost is only \$75,000, the Recipient can only bill \$75,000. Under the same example, if the actual equipment cost is \$80,000 but the Budget only lists \$60,000, the Recipient can only bill for \$60,000.

d. Recipient's 14-Day Payment Requirement for Incurred Costs

The Recipient shall pay ALL Incurred Costs for which it has invoiced the Energy Commission within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices and then receives payment from the Commission on September 15 for an Incurred Cost of \$10,000, the Recipient shall pay the entire \$10,000 by September 29. This requirement is needed to prevent Recipients from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the Commission but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the Commission for Incurred Expenses the Recipient shall pay with 14 calendar days of receiving payment from the Commission. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the Commission for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

Recipient must submit to the CAM either proof of payment of all Incurred Costs or a certification of payment of all Incurred Costs within the 14 calendar days.

For any Incurred Costs for which the Recipient has received funds from the Energy Commission and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the Energy Commission. Repaid funds will be placed back into the agreement and will be available to reimburse allowable costs in accordance with this agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [REA-XX-XXX]" Recipient shall remit the repayment to:

California Energy Commission
Accounting Office
1516 Ninth Street, MS-2
Sacramento, CA 95814

This repayment requirement of the Recipient is in addition to any other rights the Energy Commission can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments and the Energy Commission can treat the Recipient's breach of either

requirement as a material breach. Recipient can contact the CAM for any questions about the logistics of making repayments.

e. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement, but no more frequently than monthly. The final payment request, including retention, MUST be received by the Energy Commission no later than the agreement end date.

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission's other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

All Recipient expenditures, reimbursable and match, must occur within the approved term of this Agreement.

f. Invoice Approval and Disputes:

Each request for payment is subject to the CAM's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified via a Dispute Notification Form.(Std. 209).

g. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in Recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

h. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- a) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).

- b) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

i. Allowability of Costs

a) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include equipment purchase and installation, site preparation costs including equipment rental and materials, and labor costs for work performed by third party subcontractors and vendors for site preparation and equipment installation.

The costs must be incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

b) Unallowable Costs

Below are examples of unallowable costs. Details concerning the allowability of costs are available from the Energy Commission's Accounting Office.

- a) Profit of the Recipient or fees (this restriction does not apply to subcontractors);
- b) Contingency costs;
- c) Imputed costs (e.g., cost of money);
- d) Fines and penalties;
- e) Losses;
- f) Excess profit taxes; and
- g) Increased rates and fees for this Agreement above Exhibit B.
- h) Physical items that don't meet the definition of equipment;
- i) Materials not directly involved in the functioning of the renewable energy equipment;
- j) Travel and Per Diem including food and beverages;
- k) Labor performed by in-house staff (Recipient's own employees) ;
- l) Personal electronics;
- m) Permitting;
- n) Tools.

- c) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

j. Payment Request Format

Each request for payment will consist of, but not be limited to, the following:

- 1) An invoice that includes a list of Incurred and Paid Costs. Backup documentation is required at the time of invoice submittal, such as vendor invoices showing incurred and actual paid costs for equipment, labor or site preparation. Unless otherwise specified in the invoice template, the invoice must include the following:
 - a) Agreement number;
 - b) Date prepared;
 - c) Recipient's Federal tax ID number;
 - d) Billing period;
 - e) Recipient's actual cost category expenditures;
 - f) Itemized operating expenses for equipment and subcontractor(s)/vendor(s);
 - g) By budget line item (cost component) category, the budgeted amount, amount billed to date, currently billed amount, and balance of funds;
 - h) Match fund expenditures;
 - i) California Based Vendor expenditures;
 - j) Receipts for equipment; and
 - k) Subcontractor or vendor invoices that include detailed cost breakdown.
 - l) For any Incurred Costs, legally binding agreement for equipment, site preparation costs or labor costs for third party subcontractors or vendors.
- 2) A progress report that documents evidence of progress, as described in the Scope of Work.
- 3) Products prepared by the Recipient during the invoicing period, as described in the Scope of Work.

The Commission will accept computer-generated or electronically transmitted invoices without backup documentation provided that the Recipient mails a hard copy the same day.

The Recipient must submit all invoices to the following address:

California Energy Commission
Accounting Office
1516 Ninth Street, MS-2
Sacramento, CA 95814

k. Certification

The following certification will be included on each payment request form and signed by the Recipient's authorized officer:

The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract, or other procurement method. For projects considered to be a public work: prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; the contractor performing the work is registered as a public works

contractor with the Department of Industrial Relations; the Recipient and all subcontractors and vendors have complied with prevailing wage laws.

I. Retention

The Energy Commission shall retain 10 percent of any approved payment request. The 10 percent will be withheld until the project, including the installation of all renewable energy technology and related equipment, is completed and verified by Energy Commission staff. When all the equipment is installed and operational, the Recipient must notify the CAM in writing that project implementation is complete and can at that point submit a completed payment request requesting release of the retention within the required timeframe (see part e “Payment Requests” above in this term). The CAM will verify successful installation and operation of all project components before retention is released. This may include a site visit or the submission of data demonstrating system operation (such as meter readings or a utility bill).

When the Commission withholds 10% retention from each invoice, the Recipient can choose to flow down the retention requirement to its subcontractors/vendors subject to the following restrictions and any other requirements in this Agreement:

- The retention flowed down to subcontractors/vendors can only be up to a total of 10% of the amount of Commission funds the subcontractor/vendor is to receive. The Recipient is responsible for carrying the retention for its funded portion of the entire Agreement and cannot pass its share of retention to subcontractors/vendors. Here are examples:
 - i. A subcontractor submits an invoice for \$100,000 to the Recipient, and the Recipient in turn submits it to the Commission. The Commission will only pay \$90,000 of the invoice and the Recipient can elect to pay only \$90,000 to the subcontractor.
 - ii. The Recipient’s submits an invoice for its own staff in the amount of \$20,000. The Commission will only pay \$18,000 to the Recipient, and the Recipient cannot withhold the \$2,000 difference from subcontractor reimbursements.

These requirements apply to all levels of subcontractors/vendors (e.g., a subcontractor to a subcontractor).

9. Prevailing Wage

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered “public works” under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project’s Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage.

As a material term of this grant, the Recipient must assume that the project is a public work and ensure that:

- Prevailing wages are paid;
- The contractor performing the work is registered with the Department of Industrial Relations as a public works contractor;
- The project budget for labor reflects these prevailing wage requirements; and
- The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subcontractors/Vendors and Flow-down Requirements

The Recipient will ensure that its subcontractors and vendors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors and vendors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors and vendors to comply with California prevailing wage and public works laws.

e. Indemnification and Breach

Any failure of the Recipient or its subcontractors or vendors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission’s performance of this Agreement at the Commission’s option, and will be at the Recipient’s sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors or vendors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

f. Budget

The Recipient’s budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

g. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

h. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

i. Certification

The Recipient will certify to the Energy Commission on each payment request form that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient; the contractor performing the work is registered as a public works contractor with the Department of Industrial Relations; and all contractors, subcontractors and vendors otherwise complied with all California prevailing wage laws.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors, subcontractors and vendors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

10. *Recordkeeping, Cost Accounting, and Auditing*

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any application to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

c. **Audit Rights**

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement for a period of three years from date of final payment or end date of the Agreement, whichever is later. The Energy Commission, another state agency, and/or a third-party auditor designated by the Energy Commission may audit the Recipient's books, records, documents, and other evidence relevant to the project funded by this Agreement for a period of three years after date of final payment or end date of the Agreement, whichever is later. The Recipient will allow the auditor(s) to access such records at all reasonable times, with prior notice by the Energy Commission and will allow interviews of any employees who might reasonably have information related to such records.

d. **Refund to the Energy Commission**

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Recipient and seeking repayment from the Recipient.

e. **Audit Cost**

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of the amount audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

f. **Match Share**

If the budget includes a match share commitment, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. The funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match, and report on match share expenditures on its request for payment.

11. *Workers' Compensation Insurance*

- a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CAM satisfactory evidence of this insurance upon the CAM's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the CAM satisfactory evidence of the insurance upon the CAM's request.

12. *Permits and Clearances*

The Recipient is responsible for ensuring that all necessary permits and environmental documents are prepared and that clearances are obtained from the appropriate agencies.

13. *Equipment*

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the CAM's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

14. *Stop Work*

The Energy Commission staff may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

- a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the Energy Commission. The Recipient may continue to spend match funds at its own risk during a stop work order with approval from the CAM.
- b. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from the Energy Commission staff.

15. *Termination*

a. Purpose

Because the Energy Commission is a state entity, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

b. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission.

The term "for cause" includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors/vendors, that fail to perform to the standards and requirements of this Agreement;
- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or

- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.
- c. Without Cause
The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

16. Enforcement

a. Recovery of Overpayment or Misuse of Funds

In addition to any other rights and remedies the Energy Commission may have, the Energy Commission may direct the Energy Commission's Office of Chief Counsel to commence formal legal action against the Recipient to recover any portion of a payment under the Agreement that the Recipient was not otherwise entitled to receive.

b. Fraud and Misrepresentation

In addition to any other rights or remedies the Energy Commission may have, the Executive Director may initiate an investigation of any applicant or Recipient that the Executive Director has reason to believe may have misstated, falsified, or misrepresented information in submitting an application, payment claim, or reporting any information required by the Agreement. Based on the results of the investigation, the Executive Director may take any action deemed appropriate, including, but not limited to, termination of the Agreement, recovery of any overpayment, and, with the concurrence of the Energy Commission, recommending the Attorney General initiate an investigation and prosecution under Government Code Section 12650, et seq., or other provisions of law.

c. Noncompliance with Agreement

The Energy Commission may seek remedies for noncompliance with Agreement Terms and Conditions, Scope or Work, project milestones, or estimated GHG reductions including without limitation stop work, termination, recovery of funds, or any other administrative or civil action.

17. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement including but not limited to any property owner claim for damages arising under, related to or involving the Project.

18. Confidentiality

a. Identification of Confidential Information

- 1) If the Recipient has or develops products (or information contained within products) that it believes are confidential, it will follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment 1 to this Exhibit. The Energy Commission will not disclose information subject to an application for confidential designation except as provided in subsection (b).

- 2) When submitting products containing information designated as confidential, the Recipient will mark each page of any document containing confidential information as "confidential", and present it in a sealed package to the Contracts, Grants, and Loans Office.

The CAM may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information. The Recipient is not required to submit such products in a sealed package.

b. Disclosure of Confidential Information

The Energy Commission will only disclose confidential information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All confidential information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the Energy Commission's confidentiality designation.

c. Waiver of Consequential Damages

In no event will the Energy Commission or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Recipient's confidential information, even if the Commission has been advised of the possibility of such damages.

Damages that the Energy Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.

d. Limitations on the Disclosure of Products

- 1) During the Agreement, the Recipient and subcontractors must receive approval from the CAM prior to disclosing the contents of any draft product to a third party. However, if the Energy Commission makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.
- 2) Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, the Recipient may not disclose any information provided to it by the Energy Commission for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation. At the election of the CAM, the Recipient, its employees, and its subcontractors must execute a confidentiality agreement provided by the CAM.
- 3) The Recipient will ensure that each of its officers, employees, and subcontractors who are involved in the performance of this Agreement are informed about these disclosure limitations and will abide by them.

19. **Intellectual Property**

The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

a. **Ownership of Intellectual Property**

- 1) As between the Energy Commission and the Recipient, the Recipient owns all intellectual property developed under this Agreement, subject to the license described below.

“Intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- 2) The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“Product” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

b. **License to Intellectual Property**

The Energy Commission has a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes.

The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce final, CAM-approved products that do not fall within the definition of “intellectual property.”

20. **General Provisions**

a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
 - a) A change of address.
 - b) A change in business name or ownership.
 - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
 - d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
 - e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the CAM with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

Energy Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.

k. Survival of Terms

Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- Legal Statements on Products (included in Section 5, “Products”)
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 10)
- Equipment (Section 13)
- Termination (Section 15)
- Enforcement (Section 16)
- Indemnification (Section 17)
- Intellectual Property (Section 19)
- Change in Business (see this section 20)
- Access to Sites and Records (see this section 20)

21. *Certifications and Compliance*

a. Laws

The Recipient must obtain any required permits and shall comply with all applicable laws, rules, codes, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors/vendors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement; and
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of \$100,000, the Recipient acknowledges that:

- 1) It recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

- 2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

22. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **California Climate Investments** is a statewide initiative that puts billions of Cap-and-Trade dollars to work reducing greenhouse gas emissions, strengthening the economy and improving public health and the environment—particularly in disadvantaged communities, low-income communities, and low-income households.
- **Confidential Information** means information that the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505.
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.
- **Equipment** means products, objects, machinery, apparatus or implements that are purchased with Energy Commission funds and installed within the system(s) included in the project, and that have a useful shelf life of at least one year. There is no minimum price of equipment. Energy Commission funds are not intended to pay for items that remain unattached to the systems, such as tools.

For the purposes of this definition, system(s) means upgrades/replacements or additions of renewable energy generation equipment used directly to serve agricultural operations.

- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.
- **Match Funds** means cash contributions provided by the Recipient or a third party for a project funded by the Energy Commission. Refer to the solicitation discussion of match funding for guidelines specific to the project.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Priority Populations** include residents of: (1) census tracts identified as disadvantaged by California Environmental Protection Agency per SB 535; (2) census tracts identified as low-income per AB 1550; or (3) a low-income household per AB 1550.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

23. **Leased Agriculture Property**

If the Recipient is leasing the property on which improvements are to be made, the Recipient is responsible for ensuring that the improvements do not violate the lease agreement and that the Recipient has received the consent of the lessor.

24. **Greenhouse Gas Reduction Fund Requirements**

a. Measurement and Verification

Recipient must monitor and verify all installed equipment energy performance to verify the GHG emissions and energy reductions attained by the equipment installations through actual on-site measurements as specified in the Scope of Work.

The Energy Commission or its consultant reserves the right to conduct an audit of a sample of the projects to verify assumptions and estimates of energy savings and GHG emission reductions.

b. Reporting

Recipient shall provide three annual reports and other products as specified in the Scope of Work to meet project outcome reporting requirements. Reporting shall follow the format provided by the Energy Commission, consistent with the project-type specific reporting requirements in CARB guidance.